45 Atl 265. This would seem to give him ample protection. It follows that the attorney should be allowed to recover for breach of the contract. The weight of authority is to this effect, and opposed to the principal case. *Bartlett* v. *Odd-Fellows' Sav. Bk.*, 79 Cal. 218, 21 Pac. 743; *Scheinesohn* v. *Lemonek*, 84 Ohio St. 424, 95 N. E. 913; *Moyer* v. *Cantieny*, 41 Minn. 242, 42 N. W. 1060. The scope of this decision, however, is expressly limited to an attorney employed for a single litigation.

BANKRUPTCY — DISCHARGE — DEBTS NOT AFFECTED: RIGHT OF REIMBURSEMENT OF ONE INDUCED BY FALSE REPRESENTATIONS TO BECOME SURETY. — One Dunfee by false representations induced a surety company to become surety on his bond. Upon Dunfee's default the company was compelled to pay on the bond. Later Dunfee was discharged in bankruptcy. Section 17, cl. 2, of the National Bankruptcy Act (U. S. COMP. STAT., § 9601) provides that a discharge in bankruptcy shall not release a debtor from "liabilities for obtaining property by false pretenses or false representations." The company sues for reimbursement. *Held*, that it may recover. *In the matter of Dunfee*, 56 N. Y. L. J. 287.

The Bankruptcy Act originally provided that a judgment for any fraud should not be released by a discharge in bankruptcy. Under such a broad provision it is clear that obtaining a loan under false pretenses creates a liability which is not discharged in bankruptcy. *Forsyth* v. *Vehmeyer*, 177 U. S. 177. This part of the Act was amended to its present form in 1903. The effect of the amendment is to require the obtaining of actual property by fraud, in order to bar the operation of discharge. *Rudstorm* v. *Sheridan*, 122 Minn. 262, 142 N. W. 313. Obtaining a promissory note by fraud has been held to constitute the statutory crime of obtaining property by false pretenses, even though no payment has been made on the note. See *People* v. *Reed*, 70 Cal. 529, 11 Pac. 676. The obligation incurred is considered to satisfy the statutory requisite of "property." It has also been intimated that fraudulently inducing another to become a surety may constitute the crime. See *State* v. *Thatcher*, 35 N. J. L. 445. No reason is apparent why the same facts would not satisfy the requirement of the bankruptcy statute. Where, as in the principal case, payment is made on the obligation, there would seem to be no doubt that "property" is obtained. For the intended and proximate result of the fraud is the payment of money. The Act also requires that property be "obtained." But the crime of fraudulently obtaining property is held to be committed by fraudulently inducing delivery of a chattel to a third person. *Musgrave* v. *State*, 133 Ind. 297, 32 N. E. 885. There is no reason why this should not govern the principal case. The tendency of the courts, however, has been to give as wide effect as possible to discharges in bankruptcy. See *Hennequin* v. *Clews*, 111 U. S. 676; *Gleason* v. *Thaw*, 236 U. S. 558. In view of such policy, it is possible that other courts may reach a different result.

CONSTITUTIONAL LAW — CONSTRUCTION, OPERATION AND ENFORCEMENT OF CONSTITUTIONS — MEANING OF LEGISLATURE IN THE FEDERAL CONSTITUTION. — The general assembly of Ohio passed an act rearranging the congressional election districts. Under the referendum provision of the state constitution the law was submitted to popular vote and disapproved. Art. 1, § 4, of the Constitution of the United States provides that "the times, places and manner of holding elections for Senators and Representatives shall be prescribed in each state by the legislature thereof." A *mandamus* was brought to order the state election officers to disregard the referendum as void. *Held*, that the referendum may constitutionally be made part of the state legislative power for the purpose of creating congressional districts. *State of Ohio ex rel. Davis* v. *Hildebrant*, 36 Sup. Ct. Rep. 708.

The court argued only the constitutional objection that the inclusion of the referendum in the state legislative power for the purpose of creating congres-

sional districts is destructive of a republican form of government. U. S. CONST., Art. 4, § 4. This is a political question not for judicial determination. *Pacific States Tel. & Tel. Co.* v. *Oregon*, 223 U. S. 118. See 24 HARV. L. REV. 141. *Cf. Kiernan* v. *City of Portland*, 57 Ore. 454, 112 Pac. 402; *State* v. *Board of Commissioners*, 93 Kan. 405, 144 Pac. 241. But the question whether the word "legislature" in Art. 1, § 4, of the Constitution means the periodical representative assembly of the state, or the whole constitutional law-making machinery, including, as in this case, the people acting by initiative or referendum, was not discussed. The latter construction has been approved by a decision of the Supreme Court of South Dakota. *State ex rel. Schrader* v. *Polley*, 26 S. Dak. 5, 127 N. W. 848. See 24 HARV. L. REV. 220. In 1911 Congress impliedly recognized the more inclusive definition by providing that states might redistrict themselves "in the manner provided by the laws thereof." 37 STAT. AT LARGE, 13, ch. 5, COMP. STAT. 1913, § 15. The decision in the principal case assures the constitutionality of this act, and, although it does not in terms discuss the point, necessarily sanctions the definition of the South Dakota case.

CONTRACTS — DEFENSES: IMPOSSIBILITY — FAILURE OF CONSIDERATION — DIMINUTION OF PRICE. — In 1911 a gas company entered into a contract with an urban council whereby the gas company was to install a gas plant, furnish street lamps, and maintain them for five years. The council agreed to pay therefor a fixed annual sum per lamp, payment to be made in four equal quarterly installments. On January 1, 1915, the Defence of the Realm Act prohibited lighting street lamps "until further order." Consequently no gas was consumed between January 1, 1915, and November 1, 1915, when the gas company sued for the first three quarterly installments of 1915. *Held*, the gas company can recover. *Leiston Gas Co.* v. *Leiston-cum-Sizewell Urban District Council*, [1916] 2 K. B. 428.

Where performance is rendered impossible by domestic law, the promisor is not liable. *Bailey* v. *De Crespigny*, L. R. 4 Q. B. 180; *Horlock* v. *Beal*, [1916] 1 A. C. 486; *Cordes* v. *Miller*, 39 Mich. 581. This defense rests upon the policy of the law in refusing to force a party to do that which it has expressly forbidden. See 18 HARV. L. REV. 384. The principal case goes further, in that it allows the defaulting party to profit by his non-performance. The court, considering the erection of the plant and lighting system, the full performance for a long period, and the indefinite duration of the order, decided that there had not been a substantial failure of consideration. Thus the plaintiff's breach neither created liability, nor did it furnish a defense for defendant's refusal to perform. It would seem equitable in such a case to diminish the contract price, to which the plaintiff is thus entitled, to the extent that he has profited by his non-performance. In the principal case, under this rule, the plaintiff would recover the installments reduced by the expenses which he has saved by his non-performance. He would then recover fully for the services performed and his profit for the whole. This remedy in the nature of a recoupment for unearned enrichment is recognized in France, Germany, and other jurisdictions following the civil law. See WILLISTON, SALES, § 606. Surely the law, having created the loss, should apportion it equitably.

CORPORATIONS — CAPITAL, STOCK, AND DIVIDENDS — NATURE OF OVER-ISSUED STOCK. — The defendant corporation issued stock certificates in excess of its charter limit to a purchaser for value without notice. The purchaser assigned to a third person for value "all claims and demands of every description and kind" against the defendant. Later he assigned the certificates without consideration to the plaintiff. The defendant refused to issue new certificates to the plaintiff. The plaintiff sues. *Held*, that he may not recover. *Smith* v. *Worcester, etc. Ry. Co.*, 113 N. E. 462 (Mass.).

An issue of stock in excess of the charter limit is void. *New York, etc. R. Co.*